

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LANDWORKS CREATIONS, LLC

Plaintiff,

V.

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

Defendant,

C.A. No. 4:05-CV-40072-FDS

UNITED STATES FIDELITY AND GUARANTY COMPANY'S
OPPOSITION TO PLAINTIFF'S MOTION TO EXTEND TIME
TO COMPLETE ORAL DEPOSITIONS UNTIL NOVEMBER 1, 2006

United States Fidelity and Guaranty Company (“USF&G”) hereby opposes the Motion of Plaintiff, Landworks Creations, LLC (“Landworks”) to extend the time to complete oral depositions until November 1, 2006. As provided by the Scheduling Order entered on January 4, 2006, the deadline for all non-expert depositions was June 16, 2006. The final deadline for all non-expert discovery is July 21, 2006. USF&G agrees that some extension will be required, because the parties are currently unable to conduct depositions until the Court resolves several recently filed motions, including: (1) Landworks’ Petition for Leave to Conduct in Excess of Ten Depositions; (2) USF&G’s Motion to Sever and Stay; and (3) the present motion. In addition, Landworks served on or about June 20, 2006, pursuant to LR 15.1(b), a Motion to Amend the Complaint in order to, among other things, add Lovett Silverman Construction Consultants, Inc. as a defendant. The resolution of these motions will significantly impact the scope of discovery, as well as the identity of the parties required to participate in such discovery.

If the Court severs and stays Landworks' claim against USF&G for violations of Mass. Gen. L. ch. 93A and 176D,¹ then the case would proceed on Landworks' underlying breach of contract claim and USF&G's breach of contract and negligence claims. Under such circumstances, only a short extension of time would be required to conduct depositions. USF&G's would depose Landworks' Fed. R. Civ. P. 30(b)(6) designee and a representative of G&R Construction, Inc., the contractor that repaired and/or completed the work under the scope of Landworks' subcontract.

Landworks' accusation that USF&G has delayed discovery in this matter is completely false. A complete rendition of the facts regarding Landworks' alleged service of discovery in this matter is contained in USF&G's Opposition to Landworks' Motion to Compel and the accompanying affidavits of James M. Peters and Eric C. Hipp, which were filed on or about April 3, 2006 as Documents 28 – 30. The Affidavit of Eric C. Hipp also explains how Landworks' noticed nine depositions without any advance notice for April 21st, April 26th, April 27th, and May 15th. USF&G immediately notified Landworks that USF&G's counsel was not available for the dates in April due to a trial and previously scheduled vacations. Landworks' refused to consider alternate dates for the depositions. On April 20, 2006, Magistrate Judge Timothy S. Hillman denied Landworks' Motion to Compel, and also ordered that "[t]he Depositions previously scheduled for 4/21, 26 & 27 shall be rescheduled to a date convenient to all parties." Landworks unilaterally cancelled the depositions scheduled for May 15, 2006.

On May 17, 2006, after production of documents by both parties at the offices of USF&G's counsel, the parties tentatively agreed to a schedule for eight depositions. Due to the trial schedule of Landworks' counsel, depositions were scheduled during the weeks of July 10th

¹ If the Court grants Landworks' motion to amend, then USF&G will similarly request that the "extra-contractual" claims against USF&G and Lovett Silverman alleged in the Amended Complaint be severed and stayed until the underlying claim is resolved.

and July 17th. However, on June 2, 2006, Landworks filed a petition to take in excess of ten depositions, which contained wild conspiracy theories and unfounded accusations of interstate racketeering against USF&G. On or about June 6, 2006, Landworks' counsel noticed the depositions of five Lovett Silverman employees in an unrelated case pending in Massachusetts state court (the "Granger Case"), even though Lovett Silverman was not involved in any way with the project at issue in the Granger Case.² Counsel for USF&G in the present matter does not represent USF&G in the Granger case. In response to Landworks' stated intention to depose USF&G's present and former counsel and dramatically expand the scope of discovery, USF&G filed a motion to sever and stay on June 16, 2006. Thereafter, on or about June 20, 2006, Landworks served a motion to amend in order to, among other things, add Lovett Silverman Construction Consultants, Inc. as a defendant. The discovery delays in this matter have been predominantly caused by Landworks.

USF&G does agree that non-expert discovery should be extended for a short period following the Court's resolution of the pending motions referenced above. However, USF&G contends that thirty to forty-five days after the Court rulings will be adequate to complete the required depositions.

WHEREFORE, for the reasons recited above, USF&G requests that Landworks' motion to extend the time to complete oral depositions to November 1, 2006 strike be denied.

² In R.W. Granger & Sons, Inc. vs. Emanouil Brothers, Inc. vs. USF&G, No. WOCV2003-01021 (Worcester Superior Court), Mr. Meltzer represents Emanouil Brothers, Inc., which was the landscape contractor at the Shrewsbury High School construction project. Lovett Silverman was not involved in any way in that project, nor were Standen Contracting Company or Jackson Construction Company.

Respectfully submitted,

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

/s/ Eric C. Hipp

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Dated: July 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on July 5, 2006.

/s/ Eric C. Hipp

Eric C. Hipp

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